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IN THE

Supreme Court of the United States

October Term, 1941

No. 730

A. B.,
Petitioner,
v.
C. D.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

THOMAS RAEBURN WHITE,
Attorney for Respondent.

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I. REFERENCE TO OFFICIAL REPORT OF OPINIONS IN THE COURTS BELOW.

The opinion of District Judge Bard is reported in 36 F. Supp. 85. The case in the Circuit Court of Appeals has not as yet been reported.

II. COUNTER-HISTORY OF THE CASE.

This is a suit for breach of promise to marry, an action forbidden by the laws of the State of New York (the residence of the petitioner) and of Pennsylvania (the residence of the respondent). Petitioner attempted to evade the prohibition of the statutes by alleging that the suit was brought not for the breach of promise but for deceit by respondent in making a promise which he never intended to perform. The complaint as originally filed is contained in an appendix to appellant's brief in the Circuit Court of Appeals submitted by petitioner (pp. 2-4 of appendix). It avers that petitioner suffered damages in that, relying upon the promises of respondent, "she was thereby induced to and did remain unmarried"; held "herself in readiness to marry the defendant; made frequent trips with, for and on behalf of the defendant and at his urgent suggestion and request because and on account of his promises; and was put to great expense in the purchase of clothes and gifts, making trips, and otherwise."

It was further alleged that "in addition to the monetary loss, the plaintiff has suffered great humiliation, anxiety, inconvenience, emotional distress, mental anguish and otherwise."

A motion having been made to dismiss this complaint on the ground that it did not state a cause of action upon which relief could be granted, petitioner amended the same by adding the adjectives "wanton" and "oppressive" as descriptive of respondent's promises and conduct, and by striking from the complaint paragraph 9, which alleged "humiliation, anxiety, inconvenience, emotional distress, mental anguish and otherwise."

The motion being renewed, the court dismissed the complaint and ordered it stricken from the record on the ground that it had been filed in violation of the statutes of New York and Pennsylvania. This judgment was affirmed by the Circuit Court of Appeals.

III. THE REASONS ALLEGED FOR REQUESTING ALLOWANCE OF WRIT OF CERTIORARI.

It is unnecessary to point out that petitioner has alleged no adequate reasons for requesting this court to review this case. It should be pointed out, however, that the statement on page 6 of the petition, that the case of *Snyder v. Snyder*, 172 N. Y. Misc. 204, 14 N. Y. S. (2d) 815 (erroneously cited by petitioner as 20 N. Y. S. (2d) 815), is the only case in the books dealing with an effort to evade a similar statute by charging that the promise was fraudulently made, is not correct. The case of *Sulkowski v. Szewczyk*, 255 App. Div. 103, 6 N. Y. S. (2d) 97, is precisely in point, a case in which a defendant promised to marry the plaintiff although he was already married, of which the plaintiff was ignorant. The suit charging deceit was dismissed by the Appellate Division of the New York Supreme Court, as in violation of the statute. The court said (p. 104):

> "If plaintiff's contention be correct, then any action based upon a breach of promise to marry could be turned into an action for misrepresentations by merely alleging that the promise of marriage was a sham, made solely for the purpose of taking advantage of the plaintiff."

IV. ARGUMENT.

The statutes both of New York and Pennsylvania forbid suits based upon breach of contracts to marry. Penalties are prescribed not only for the parties who file or threaten to file such suits, but upon the attorneys who act in their behalf.

Petitioner's suit was filed in direct violation of these statutes. The effort to escape their application by alleging that the promise was fraudulently made without intent to perform cannot succeed. Otherwise a plaintiff disappointed in defendant's failure to perform his alleged promise to marry her could in every case escape the application of the statute by alleging that he never intended to do so.

The rather vague suggestion in the petition that the suit was one brought simply to recover the value of gifts made and expenses incurred is clearly without basis, as an examination of the complaint demonstrates. Respondent submits herewith copies of his brief filed in the Circuit Court of Appeals which quotes the statutes in question, cites certain authorities bearing on the case and contains a more extended argument.

It is respectfully submitted that the petition should be denied.

Respectfully submitted,

T. R. WHITE,

Attorney for Respondent.